

AMENDED IN SENATE APRIL 11, 2000

**SENATE BILL**

**No. 2018**

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**Introduced by Senator Schiff**

February 25, 2000

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An act to amend Section ~~6603~~ of 14202.2 of the Penal Code, and to amend Sections 6603 and 6604 of, and to amend and repeal Section 6604.1 of, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 2018, as amended, Schiff. Sexually violent predators: commitment evaluations.

(1) Existing law provides that the Attorney General shall establish and maintain the Violent Crime Information Center, as specified, and provides that the Department of Justice, in conjunction with the Department of Corrections, shall update any supervised release file available to law enforcement via a specified information system to reflect the most recent paroled inmates.

This bill would provide that the Department of Justice shall also work in conjunction with the State Department of Mental Health in updating this information system to reflect patients undergoing community mental health treatment and supervision through the Forensic Conditional Release Program administered by the State Department of Mental Health, other than individuals committed as incompetent to stand trial.

(2) Existing law provides that a person who is subject to commitment as a sexually violent predator, as defined, shall

be entitled to a trial by jury, the assistance of counsel, the right to retain experts to perform an examination on his or her behalf, and shall have access to all relevant medical and psychological records and reports. Existing law provides that the attorney bringing the petition to have the defendant committed also has the right to demand a trial by jury, but if no demand for a jury trial is made by either side, that the trial shall be conducted before a court without a jury. Existing law also provides for the examination of a person subject to commitment under these provisions by at least 2 psychiatrists or psychologists designated by the State Department of Mental Health, with additional evaluations to be performed as specified.

This bill would provide that the attorney bringing the petition to have a person committed as a sexually violent predator may request the State Department of Mental Health to perform updated evaluations as specified, and if an original evaluator is no longer available to testify, a replacement evaluation. The bill would direct the department to perform the requested evaluations and forward them to the petitioning attorney, but would provide that updated or replacement evaluations shall only be performed for these specified reasons. This bill would provide that an updated or replacement evaluation shall include a review of available medical and psychological records, including treatment records, consultation with treating clinicians, and voluntary interviews with the subject, and would also provide that if an updated or replacement evaluation results in a split opinion as to whether the subject meets the criteria for commitment, the department shall conduct 2 additional evaluations as specified.

*(3) Existing law provides that the court or jury shall determine whether, beyond a reasonable doubt, a person is a sexually violent predator; and if the court or jury does so, that the person shall be committed for 2 years to the custody of the State Department of Mental Health for treatment and confinement within a secure facility. Existing law provides that the person shall not be kept in actual custody under these provisions for longer than 2 years unless a subsequent extended commitment is obtained from the court incident to*



*the filing of a new petition for commitment, or unless the term of commitment changes as specified. Existing law also provides that, until July 1, 2001, this 2-year period of commitment commences on the date upon which the court issues the order of commitment and shall not be reduced by any time spent in a secure facility prior to the order of commitment.*

*This bill would clarify that a person may be confined beyond this 2-year period pursuant to the filing of a petition for extended commitment, which would result in an additional 2-year term of commitment, and would also delete the automatic repeal of the provision prohibiting the reduction of the term of commitment for time spent in a secure facility prior to the order of commitment, thereby making this provision applicable indefinitely.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 14202.2 of the Penal Code is
- 2 amended to read:
- 3 14202.2. The Department of Justice, in conjunction
- 4 with the Department of Corrections and the State
- 5 Department of Mental Health, shall update any
- 6 supervised release file that is available to law
- 7 enforcement on the California Law Enforcement
- 8 Telecommunications System every 10 days to reflect the
- 9 following:
- 10 (a) The most recent inmates paroled from facilities
- 11 under the jurisdiction of the Department of Corrections.
- 12 (b) Patients undergoing community mental health
- 13 treatment and supervision through the Forensic
- 14 Conditional Release Program administered by the State
- 15 Department of Mental Health, other than individuals
- 16 committed as incompetent to stand trial pursuant to
- 17 Chapter 6 (commencing with Section 1367) of Title 10 of
- 18 Part 2.
- 19 SEC. 2. Section 6603 of the Welfare and Institutions
- 20 Code is amended to read:

1 6603. (a) A person subject to this article shall be  
2 entitled to a trial by jury, the assistance of counsel, the  
3 right to retain experts or professional persons to perform  
4 an examination on his or her behalf, and have access to all  
5 relevant medical and psychological records and reports.  
6 In the case of a person who is indigent, the court shall  
7 appoint counsel to assist him or her, and, upon the  
8 person's request, assist the person in obtaining an expert  
9 or professional person to perform an examination or  
10 participate in the trial on the person's behalf.

11 (b) The attorney petitioning for commitment under  
12 this article shall have the right to demand that the trial be  
13 before a jury.

14 (c) If the attorney petitioning for commitment under  
15 this article determines that updated evaluations are  
16 necessary in order to properly present the case for  
17 commitment, the attorney may request the State  
18 Department of Mental Health to perform updated  
19 evaluations. If one or more of the original evaluators is no  
20 longer available to testify in court proceedings, the  
21 attorney petitioning for commitment under this article  
22 may request the State Department of Mental Health to  
23 perform replacement evaluations. When a request is  
24 made for an updated or replacement evaluation, the State  
25 Department of Mental Health shall perform the  
26 requested evaluations and forward them to the  
27 petitioning attorney. However, updated or replacement  
28 evaluations shall not be performed except as necessary to  
29 update one or both original evaluations or to replace the  
30 evaluation of an evaluator that is no longer available for  
31 testimony. These updated or replacement evaluations  
32 shall include review of available medical and  
33 psychological records, including treatment records,  
34 consultation with current treating clinicians, and  
35 interviews of the person being evaluated unless that  
36 person declines to be interviewed. If an updated or  
37 replacement evaluation results in a split opinion as to  
38 whether the subject meets the criteria for commitment,  
39 the State Department of Mental Health shall conduct two

1 additional evaluations in accordance with subdivision (f)  
2 of Section 6601.

3 (d) If no demand is made by the person subject to this  
4 article or the petitioning attorney, the trial shall be before  
5 the court without jury.

6 (e) A unanimous verdict shall be required in any jury  
7 trial.

8 (f) The court shall notify the State Department of  
9 Mental Health of the outcome of the trial by forwarding  
10 to the department a copy of the minute order of the court  
11 within 72 hours of the decision.

12 *SEC. 3. Section 6604 of the Welfare and Institutions*  
13 *Code is amended to read:*

14 6604. The court or jury shall determine whether,  
15 beyond a reasonable doubt, the person is a sexually  
16 violent predator. If the court or jury is not satisfied  
17 beyond a reasonable doubt that the person is a sexually  
18 violent predator, the court shall direct that the person be  
19 released at the conclusion of the term for which he or she  
20 was initially sentenced, or that the person be  
21 unconditionally released at the end of parole, whichever  
22 is applicable. If the court or jury determines that the  
23 person is a sexually violent predator, the person shall be  
24 committed for two years to the custody of the State  
25 Department of Mental Health for appropriate treatment  
26 and confinement in a secure facility designated by the  
27 Director of Mental Health, and the person shall not be  
28 kept in actual custody longer than two years unless a  
29 subsequent extended commitment is obtained from the  
30 court incident to the filing of a ~~new~~ petition for *extended*  
31 commitment under this article or unless the term of  
32 commitment changes pursuant to subdivision (e) of  
33 Section 6605. Time spent on conditional release shall not  
34 count toward the two-year term of commitment, unless  
35 the person is placed in a locked facility by the conditional  
36 release program, in which case the time in a locked  
37 facility shall count toward the two-year term of  
38 commitment. The facility shall be located on the grounds  
39 of an institution under the jurisdiction of the Department  
40 of Corrections.

1 SEC. 4. *Section 6604.1 of the Welfare and Institutions*  
2 *Code, as amended by Section 7 of Chapter 961 of the*  
3 *Statutes of 1998, is amended to read:*

4 6604.1. (a) The two-year term of commitment  
5 provided for in Section 6604 shall commence on the date  
6 upon which the court issues the initial order of  
7 commitment pursuant to that section. The *initial*  
8 two-year term shall not be reduced by any time spent in  
9 a secure facility prior to the order of commitment. For  
10 any subsequent extended commitments, the term of  
11 commitment shall be *for two years commencing* from the  
12 date of the termination of the previous commitment.

13 ~~(b) This section shall become inoperative on July 1,~~  
14 ~~2001, and, as of January 1, 2002, is repealed, unless a later~~  
15 ~~enacted statute that is enacted before January 1, 2002,~~  
16 ~~deletes or extends the dates on which it becomes~~  
17 ~~inoperative and is repealed.~~ *The evaluation of the person*  
18 *by the State Department of Mental Health regarding all*  
19 *petitions for extended commitment shall consist of a*  
20 *clinical evaluation and recommendation in a report that*  
21 *is prepared by designated clinical staff of the facility that*  
22 *is providing custody and treatment to the person and*  
23 *which is approved and signed by the medical director of*  
24 *that facility. The rights, requirements, and procedures set*  
25 *forth in Section 6603 shall apply to extended commitment*  
26 *proceedings.*

27 SEC. 5. *Section 6604.1 of the Welfare and Institutions*  
28 *Code, as added by Section 8 of Chapter 961 of the Statutes*  
29 *of 1998, is repealed.*

30 ~~6604.1. (a) The two-year term of commitment~~  
31 ~~provided for in Section 6604 shall commence on the date~~  
32 ~~upon which the court issues the initial order of~~  
33 ~~commitment pursuant to that section. For subsequent~~  
34 ~~extended commitments, the term of commitment shall~~  
35 ~~be from the date of the termination of the previous~~  
36 ~~commitment.~~

37 ~~(b) This section shall become operative on July 1, 2001.~~